

CCRB INVESTIGATIVE RECOMMENDATION

Investigator: Emily Devaney	Team: Squad #4	CCRB Case #: 201908966	<input checked="" type="checkbox"/> Force	<input type="checkbox"/> Discourt.	<input type="checkbox"/> U.S.
			<input checked="" type="checkbox"/> Abuse	<input type="checkbox"/> O.L.	<input type="checkbox"/> Injury
Incident Date(s) Monday, 09/02/2019 6:00 AM	Location of Incident: Church Avenue and East 37th Street	Precinct: 67	18 Mo. SOL 3/2/2021	EO SOL 10/17/2021	
Date/Time CV Reported Thu, 10/10/2019 5:53 PM	CV Reported At: CCRB	How CV Reported: Call Processing System	Date/Time Received at CCRB Thu, 10/10/2019 5:53 PM		

Complainant/Victim	Type	Home Address

Witness(es)	Home Address

Subject Officer(s)	Shield	TaxID	Command
1. SSA Charles Schwartz	05458	947478	067 PCT
2. DTS Devin Baker	1595	952439	067 PCT
3. POM Matthew Walker	18702	959352	067 PCT
4. An officer			

Witness Officer(s)	Shield No	Tax No	Cmd Name
1. POM Edwin Hill	16941	957678	HWY DST
2. POM Besnik Bojkovic	09214	954556	INT CIS
3. POM Hector Casillas	30712	952552	INT CIS

Officer(s)	Allegation	Investigator Recommendation
A.SSA Charles Schwartz	Abuse: Sergeant Charles Schwartz stopped the vehicle in which § 87(2)(b) was an occupant.	
B.SSA Charles Schwartz	Force: Sergeant Charles Schwartz used physical force against § 87(2)(b)	
C.SSA Charles Schwartz	Force: Sergeant Charles Schwartz used physical force against § 87(2)(b)	
D.DTS Devin Baker	Force: Detective Devin Baker used physical force against § 87(2)(b)	
E. An officer	Force: An officer used physical force against § 87(2)(b)	
§ 87(2)(g), § 87(4-b)		
§ 87(2)(g), § 87(4-b)		
§ 87(2)(g), § 87(4-b)		
§ 87(2)(g), § 87(4-b)		

Case Summary

On October 10, 2019, § 87(2)(b) filed this complaint with the CCRB by phone.

On September 2, 2019, at approximately 6:00 a.m., § 87(2)(b) was in a car heading home when Sergeant Charles Schwartz from the 67th Precinct stopped the vehicle on Church Avenue and East 37th Street in Brooklyn (**Allegation A: Abuse of Authority**, § 87(2)(g)). Sgt. Schwartz pulled § 87(2)(b) out of the vehicle (**Allegation B: Force**, § 87(2)(g)). Sgt. Schwartz pushed § 87(2)(b) against the car, while his partner, Detective Devin Baker, also from the 67th Precinct, pulled § 87(2)(b) back (**Allegations C-D: Force**, § 87(2)(g)). An officer poked or punched § 87(2)(b) in the lower back (**Allegation E: Force**, § 87(2)(g)). § 87(2)(b) was handcuffed and taken to the 67th Precinct stationhouse where he was released with a summons for disorderly conduct.

The investigation obtained a cell phone video from a witness, § 87(2)(b) (Board Review 03). The investigation also obtained two body-worn camera (BWC) videos from Detective Matthew Walker from the 67th Precinct and Officer Besnik Bojkovic from Criminal Intelligence Section (Board Review 11-12, respectively). § 87(2)(g), § 87(4-b)

§ 87(2)(b)

§ 87(2)(b)

§ 87(2)(b)

Findings and Recommendations

Allegation (A) Abuse of Authority: Sergeant Charles Schwartz stopped the vehicle in which § 87(2)(b) was an occupant.

§ 87(2)(b) testified that he and three friends, including § 87(2)(b) were in an Uber heading back to his apartment after attending a party (Board Review 01). The car was headed east on Church Avenue when they encountered heavy vehicle traffic. Many vehicles began honking, including the driver of his vehicle, § 87(2)(b). There were marked and unmarked police vehicles stopped in the street ahead of them. After sitting in traffic for approximately ten minutes, the vehicle passed the scene of the incident causing the traffic. There appeared to be about four officers standing together in the street talking and laughing. § 87(2)(b) remarked to his friends, “See, this is the bullshit I’m talking about. Blocking traffic. This is some bullshit.” § 87(2)(b) did not say this to anyone outside the vehicle. § 87(2)(b) did not have any interaction with anyone outside the vehicle. § 87(2)(b) continued driving eastbound for one to two minutes, or a few blocks, until an unmarked NYPD vehicle behind § 87(2)(b) turned on its emergency lights. § 87(2)(b) immediately pulled over. Sgt. Schwartz approached on the passenger side and told § 87(2)(b) to exit the car, which § 87(2)(b) did. After checking § 87(2)(b) identification, Sgt. Schwartz told § 87(2)(b) to get back in the car. As § 87(2)(b) began to sit, Sgt. Schwartz grabbed § 87(2)(b) right arm and said, “Get out.” Sgt. Schwartz pulled § 87(2)(b) out of the vehicle (see analysis of **Allegation B** below). Sgt. Schwartz and Det. Baker handcuffed § 87(2)(b). PO Bojkovic transported § 87(2)(b) to the 67th Precinct stationhouse. § 87(2)(b) was released from the stationhouse later with a summons for disorderly conduct.

In her phone statement, § 87(2)(b) described heavy vehicle traffic and crowds of pedestrians on the street (Board Review 02). While stopped in traffic, § 87(2)(b) yelled, “Get out of the street,” to a group of people in the street. § 87(2)(b) realized after that these people were plainclothes officers. A few blocks later, Sgt. Schwartz pulled over their car. § 87(2)(b) did not believe Sgt. Schwartz was one of the officers § 87(2)(b) yelled at. § 87(2)(b) took a video on her cell phone of the car stop.

The cell phone video did not capture the events prior to Sgt. Schwartz approaching the vehicle, and therefore did not provide evidence of § 87(2)(b) behavior prior to the stop (Board Review 03).

§ 87(2)(b) phone statement was consistent with § 87(2)(b) testimony (Board Review 04). § 87(2)(b) did not specify if § 87(2)(b) engaged with any person outside the vehicle. § 87(2)(b) refused to provide any additional statements and declined to participate in this case.

Sgt. Schwartz testified that he was breaking down metal barriers from the J'ouvert festival on the side of the road with his partners when § 87(2)(b) yelled at the officers from inside a vehicle stopped at a traffic light steps away (Board Review 05). Sgt. Schwartz did not recall specifically what § 87(2)(b) said, but he knew § 87(2)(b) called the officers "dickheads" and "pigs." § 87(2)(b) then spat toward Sgt. Schwartz and the officers but did not hit them. The traffic light turned green, and the vehicle moved away from the officers. This initial encounter lasted less than one minute. Sgt. Schwartz decided at that point to pull over the vehicle to issue § 87(2)(b) a summons.

Det. Baker stated that the street was full of hundreds or thousands of people both as pedestrians and in vehicles because of the holiday weekend (Board Review 06). Det. Baker was standing outside with his partners when he heard § 87(2)(b) yell from inside a car, "Suck my dick," and, "Fuck you," and, "Fuck this," at the officers. Cars began honking at the commotion, and approximately ten people stopped to look at § 87(2)(b). One individual yelled back to § 87(2)(b) but Det. Baker did not recall what was said. § 87(2)(b) car slowly passed Det. Baker and his partners, and § 87(2)(b) spat at them. The spit did not make contact with any of the officers. Det. Baker believed § 87(2)(b) cursing and spitting caused a crowd to gather. These actions constituted a violation of disorderly conduct. The vehicle stopped approximately a block ahead. Det. Baker did not recall if the vehicle stopped because of traffic or if he and his partners stopped the vehicle. Det. Baker and his partners approached the vehicle. Sgt. Schwartz told Det. Baker that § 87(2)(b) was under arrest. § 87(2)(b) was removed to the stationhouse where he was later released with a summons. Det. Baker did not recall preparing or issuing the summons, even after viewing the summons during his interview.

Det. Baker issued a summons to § 87(2)(b) for disorderly conduct, section 2, for unreasonable noise (Board Review 08).

Det. Walker testified that § 87(2)(b) yelled, "Fuck you shit," or, "Fuck you pig," and then spat at the officers as he passed by (Board Review 07). The spit did not make contact with any officers. Det. Walker, Sgt. Schwartz, and Det. Baker all agreed to pull over the car with § 87(2)(b) to address § 87(2)(b) spitting and cursing.

According to New York Penal Law § 240.20, a person is guilty of disorderly conduct when, with intent to cause public inconvenience, annoyance or alarm, or recklessly creating a risk thereof, he makes unreasonable noise or he uses abusive or obscene language, or makes an obscene gesture in a public place (Board Review 09).

§ 87(2)(g)
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§ 87(2)(g)

Allegation (B) Force: Sergeant Charles Schwartz used physical force against § 87(2)(b)

It is undisputed that § 87(2)(b) complied with Sgt. Schwartz's command to step out of the vehicle and provide his identification.

§ 87(2)(b) alleged that Sgt. Schwartz told him to sit down in the passenger seat after § 87(2)(b) gave Sgt. Schwartz his identification (Board Review 01). As § 87(2)(b) descended into the passenger seat, Sgt. Schwartz pulled § 87(2)(b) arm and said, "Get out of the car." § 87(2)(b) stood up. § 87(2)(b) did not say anything to Sgt. Schwartz during this time. Sgt. Schwartz and Det. Baker placed § 87(2)(b) in handcuffs. § 87(2)(b) was not intoxicated at the time.

The cell phone video showed that Sgt. Schwartz told § 87(2)(b) to sit down and then pulled § 87(2)(b) by the arm beginning at the 00:16 minute-mark of the player's timestamp (Board Review 03). § 87(2)(b) was not heard cursing at or name-calling the officers; however, the conversation between Sgt. Schwartz and § 87(2)(b) was partially inaudible due to § 87(2)(b) and the other witnesses speaking at the same time.

§ 87(2)(b) testimony is consistent with the cell phone video (Board Review 02).

§ 87(2)(b) did not recall if officers used physical force against § 87(2)(b) (Board Review 04).

Sgt. Schwartz testified that § 87(2)(b) continued to curse at the officers and call the officers names during the stop (Board Review 05). Sgt. Schwartz stated § 87(2)(b) threatened the officers and that the situation was "tumultuous," but the only example of § 87(2)(b) "threatening" and "tumultuous" behavior was that § 87(2)(b) cursed at the officers and called them "dickheads" and "pigs." Sgt. Schwartz decided to remove § 87(2)(b) to the stationhouse instead of issuing a summons in the street in order to deescalate the situation. Sgt. Schwartz believed § 87(2)(b) was intoxicated because Sgt. Schwartz smelled alcohol at some point during the stop. § 87(2)(b) was placed in handcuffs. Sgt. Schwartz did not recall who handcuffed § 87(2)(b) but he did not believe § 87(2)(b) resisted the handcuffs in any way.

Sgt. Schwartz did not have an independent recollection of asking § 87(2)(b) to sit down in the car and then get out of the car. Sgt. Schwartz viewed the cell phone video, which did not refresh his recollection of these instructions. Sgt. Schwartz surmised that § 87(2)(b) said or did something as he was descending into the passenger seat that encouraged Sgt. Schwartz to bring § 87(2)(b) out of the vehicle again. Sgt. Schwartz declined to amend or add anything to his statement after viewing this video.

Det. Baker stated that after Sgt. Schwartz looked at § 87(2)(b) identification, he told Det. Baker that § 87(2)(b) was under arrest (Board Review 06). Det. Baker believed § 87(2)(b) said or did something that caused Sgt. Schwartz to choose to arrest § 87(2)(b) but Det. Baker did not observe § 87(2)(b) say or do anything. Det. Baker was unable to describe § 87(2)(b) demeanor during this part of the encounter. § 87(2)(b) was placed in handcuffs and did not resist.

After viewing the cell phone video, Det. Baker stated that he did not know why Sgt. Schwartz told § 87(2)(b) to get into the car and then exit the car. Det. Baker believed it was at this point that § 87(2)(b) acted in a way that caused Sgt. Schwartz to arrest him.

Det. Walker characterized § 87(2)(b) as "agitated" and "boisterous" because § 87(2)(b) was

yelling loudly (Board Review 07). Det. Walker believed § 87(2)(b) was intoxicated because of his actions. Det. Walker had his back to Sgt. Schwartz and § 87(2)(b) while Det. Walker ran § 87(2)(b) identification; therefore, Det. Walker did not observe Sgt. Schwartz remove § 87(2)(b) from the vehicle. Sgt. Schwartz and Det. Baker handcuffed § 87(2)(b) who was compliant.

The BWC video from Det. Walker did not capture the first 30-seconds of audio (Board Review 11). The video did not show Sgt. Schwartz remove § 87(2)(b) from the vehicle because, as Det. Walker testified, Det. Walker was not facing Sgt. Schwartz at that time. The remainder of the video did not show § 87(2)(b) curse at any officers or call them names. The video showed § 87(2)(b) calmly ask, “What is this about?” at the 00:56 and 01:09 minute-marks.

The BWC video from Det. Bojkovic did not show this part of the incident (Board Review 12).

Based on the above evidence, the investigation determined that Sgt. Schwartz told § 87(2)(b) to sit down and then pulled § 87(2)(b) out of the car. In addition, the video evidence refutes Sgt. Schwartz’s and Det. Walker’s characterization that § 87(2)(b) was cursing, name-calling, and being loud throughout the encounter.

According to NYPD Patrol Guide Procedure 221-01, force may be used when it is reasonable to place a person in custody, provided it is reasonable under the circumstances (Board Review 10). In addition, officers will use de-escalation techniques to gain voluntary compliance when it is safe to do so. Reasonableness is determined with consideration of a number of factors, including but not limited to the nature and severity of the circumstances, actions by the subject, immediacy of the perceived threat, whether the subject is resisting custody, and if the subject seems to be under the influence of a substance which would affect pain tolerance or increase the likelihood of violence. If the force used is not reasonable, it will be deemed excessive.

Sgt. Schwartz did not attempt to gain voluntary compliance by telling § 87(2)(b) to step out of the vehicle prior to grabbing him and pulling him out. Given that § 87(2)(b) complied with Sgt. Schwartz’s prior instructions to get out of the vehicle, provide his identification, and then sit back in the vehicle, it is conceivable that § 87(2)(b) would have also voluntarily complied with exiting the vehicle. Whether § 87(2)(b) was intoxicated is inconclusive; however, the video evidence showed that § 87(2)(b) was acting calmly and not loud or cursing, as Sgt. Schwartz and Det. Baker testified. In addition, none of the officers characterized § 87(2)(b) as posing a threat at the time § 87(2)(g)

§ 87(2)(g)

§ 87(2)(g)

Allegation (C) Force: Sergeant Charles Schwartz used physical force against § 87(2)(b)

Allegation (D) Force: Detective Devin Baker used physical force against § 87(2)(b)

Allegation (E) Force: An officer used physical force against § 87(2)(b)

§ 87(2)(b) stated that Sgt. Schwartz pushed § 87(2)(b) against the car and pulled one of his arms behind his back (Board Review 01). Det. Baker put his arm around § 87(2)(b) “neck area” for approximately three seconds. § 87(2)(b) was unable to describe how Det. Baker’s arm made contact with his neck. § 87(2)(b) breathing was not restricted. Sgt. Schwartz pushed § 87(2)(b) forward while Det. Baker held § 87(2)(b) back. Simultaneously, § 87(2)(b) felt an officer “jab” two or three times against his lower back in a manner that felt like poking or punching. § 87(2)(b) was unable to describe this action in more detail. § 87(2)(b) did not sustain any injuries as a result of these uses of force.

§ 87(2)(g), § 87(4-b)


Civilian and Officer CCRB Histories

- § 87(2)(b) [REDACTED]
 - [REDACTED]
 - [REDACTED]
 - [REDACTED]
 - [REDACTED]
- Sergeant Charles Schwartz has been a member of service for 13 years and has been a subject in nine CCRB complaints and 19 allegations, of which two were substantiated (Board Review 16):
 - 201903723 involved substantiated allegations of failure to provide RTKA card, a stop, § 87(2)(g), § 87(4-b) [REDACTED] The Board recommended formalized training, and the NYPD imposed formalized training.
 - § 87(2)(g) [REDACTED]
- Detective Devin Baker has been a member of service for nine years and has been a subject in 13 CCRB complaints and 29 allegations, of which four were substantiated (Board Review 17):
 - § 87(2)(g) [REDACTED]
 - § 87(2)(g) [REDACTED]
- Detective Matthew Walker has been a member of service for six years and has been a subject in four CCRB complaints and eight allegations, of which there were no substantiations, but one allegation of other misconduct noted (Board Review 18):
 - § 87(2)(g), § 87(4-b) [REDACTED]
 - § 87(2)(g) [REDACTED]

Mediation, Civil, and Criminal Histories

- On December 4, 2019, this case was sent to mediation. On September 2, 2020, this case was returned to investigation because § 87(2)(b) changed his decision to investigation after his mediation was delayed due to COVID-19.
- As of April 5, 2021, the New York City Office of the Comptroller has no record of a Notice of Claim being filed in regard to this complaint (Board Review 19).
- [§ 87(2)(b)] [§§ 86(1)(3)&(4)] [§ 87(2)(c)]

Squad: 4

Investigator:		Inv. Devaney	09/03/2021
	Signature	Print Title & Name	Date

Squad Leader:	__Raquel Velasquez__	__IM Raquel Velasquez__	__09/07/2021__
	Signature	Print Title & Name	Date

Reviewer:	_____	_____	_____
	Signature	Print Title & Name	Date